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Nutrition Distribution LLC*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

NUTRITION DISTRIBUTION LLC,
an Arizona Limited Liability
Company,

Plaintiff,

VS.

KING PEPTIDES LLC, a Florida Limited Liability Company; AARON SINGERMAN, an individual; PJ BRAUN, an individual; UNLIMITED PRODUCTS AND SOLUTIONS, LLC a Limited Liability Company; IAN RICH, an individual; and DOES 1 through 10, inclusive,

Defendants.

CASE NO. 2:16-cv-00451 - DLR

**FIRST AMENDED COMPLAINT
FOR FALSE ADVERTISING IN
VIOLATION OF THE LANHAM
ACT § 42 (a)(1)(B))**

[DEMAND FOR A JURY TRIAL]

1 Plaintiff Nutrition Distribution, LLC, dba Athletic Xtreme (“ND” or “Plaintiff”),
2 by and through its undersigned attorneys, submits this Complaint against defendant King
3 Peptides LLC, Aaron Singerman, PJ Braun, Unlimited Products and Solutions, LLC, and
4 Ian Rich (“King Peptides” or “Defendant”), and in support thereof, avers as follows:

5 **INTRODUCTION**

6 1. This is a civil action arising out of Defendant’s false and misleading
7 advertising and statements in connection with its various purported “research peptides,”
8 including but not limited to, its Growth Hormone Releasing Hormone (“CJC-1295”),
9 Growth Hormone Releasing Peptide-2 (“GHRP-2”), Growth Hormone Releasing
10 Peptide-6 (“GHRP-6”), Mechano Growth Factor (“MGF”), and Melanotan products
11 (collectively, the “Research Peptides”). As evidenced by King Peptides’ representations
12 on its website, these “Research Peptides” are unlawfully marketed and misbranded as
13 “not for human consumption” and “intended for laboratory research purposes only.”
14 Contrary to these “disclaimers,” King Peptides’ advertisements claim that its “Research
15 Peptides” will provide numerous purported benefits to consumers seeking to enhance
16 their physiques, including but not limited to, increasing the production of human growth
17 hormone, promoting muscle gain and strength, weight loss, anti-aging properties,
18 increasing lean body mass, and reducing body fat.

19 2. Peptides are chemical compounds containing 2 or more amino acids linked
20 by the carboxyl group of 1 amino acid and the amino group of another. Critically,
21 peptides cannot be dispensed for human use without a prescription from a licensed
22 medical practitioner due to their toxicity and potential for harmful effect.

23 3. Despite the foregoing, there is an illegitimate market for peptides among
24 bodybuilders, competitive athletes, and others seeking to enhance their physiques, since it
25 is believed that the use of these substances will enhance muscle development, among
26 other potential physical benefits.

27 4. Contrary to King Peptides’ various disclaimers that its “Research Peptides,”
28 are “not for human consumption” and “intended for laboratory research purposes only,”

King Peptides clearly markets and advertises products to consumers seeking to alter the structure and function of their bodies. Thus, as demonstrated below, King Peptides' "Research Peptides" are actually "drugs," "new drugs," and/or "prescription drugs" as defined by the United States Federal Food, Drug, and Cosmetic Act ("FDCA"). Indeed, King Peptides' various "disclaimers" and intentional mislabeling is nothing more than a scheme to defraud authorities and to avoid Food and Drug Administration ("FDA") scrutiny.

8 5. Defendant's continuing false, misleading, illegal and deceptive practices
9 violate the Lanham Act, have unjustly enriched Defendant at the expense of Plaintiff, and
10 have caused Plaintiff extensive and irreparable harm, including but not limited to, loss of
11 revenue, disparagement, and loss of goodwill.

12 6. Among other things, this action seeks to enjoin Defendant from the
13 marketing and sale of its “Research Peptides,” as Defendant is illegally and falsely
14 marketing such products in violation of the Lanham Act.

JURISDICTION AND VENUE

16 7. This Court has subject matter jurisdiction over this action pursuant to 15
17 U.S.C. § 1121 and 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. 1332
18 (diversity jurisdiction) because Plaintiff asserts causes of action arising under federal law
19 and the parties are citizens of different states and the controversy exceeds the value of
20 \$75,000.

21 8. This Court has personal jurisdiction over King Peptides because Defendant
22 has, directly or through its intermediaries (including distributors, retailers, and others),
23 developed, licensed, manufactured, shipped, distributed, offered for sale, sold, and
24 advertised its products in the United States, the State of Arizona, and this district,
25 including but not limited to, the “Research Peptides” at issue here. Defendant has
26 purposefully and voluntarily placed these products into the stream of commerce with the
27 expectation that they will be purchased in this district.

1 9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2)
2 because a substantial part of the events or omissions which gave rise to the claim
3 occurred in this district. *See Rowpar Pharm., Inc. v. Lornamead, Inc.*, No. CV13-01071-
4 PHX DGC, 2013 WL 5530825 (D. Ariz. Oct. 7, 2013) (finding venue in Arizona proper).
5 Alternatively, venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(3).

PARTIES

7 10. Plaintiff Nutrition Distribution, LLC, dba Athletic Xtreme (“ND” or
8 “Plaintiff”) is an Arizona limited liability company with its principal place of business at
9 14215 N. 8th Pl., Phoenix, Arizona, 85022.

10 11. Defendant King Peptides LLC (“King Peptides” or “Defendant”) was
11 registered as a Florida limited liability company, with its principal business address listed
12 as 9605 Parkview Avenue, Boca Raton, Florida 33428.

13 12. Defendant Aaron Singerman is an individual residing in Florida and a
14 member of King Peptides LLC.

13. Defendant PJ Braun is an individual residing in Florida and a member of
14 King Peptides LLC.

17 14. Defendant Unlimited Products and Solutions, LLC is a Florida Limited
18 Liability Company.

19 || 15. Defendant Ian Rich is an individual residing in Florida.

16. Plaintiff is ignorant of the true names and capacities of defendants sued
herein as Does 1- 10, inclusive, and therefore sued these defendants by such fictitious
names. Plaintiff will amend this Complaint to allege their true names and capacities
when ascertained. Plaintiff is informed and believes and thereon alleges that each of
these fictitiously named defendants is responsible in some manner for the occurrences
herein alleged, and that Plaintiff's injuries as herein alleged were proximately caused by
the aforementioned defendants.

FACTUAL ALLEGATIONS

17. The nutritional supplement industry is one of the fastest growing and most lucrative in the United States. A recent Forbes article estimates that nutritional supplement sales accounted for \$32 billion in revenue in 2012 and predicts this number to grow to \$60 billion within ten years. The growth and size of the nutritional supplement market and the relatively low barriers to entry provide perverse incentives for unfair competition prohibited by the Lanham Act and other illegal activity.

Plaintiff Nutrition Distribution & “Mass FX Black”

18. Plaintiff is a cutting edge sports supplement manufacturer and marketer. From its inception, Plaintiff was a leader in the nutritional supplement market, specifically for bodybuilding.

19. Plaintiff has several categories of bodybuilding products, including pre-workouts, muscle-gainers, fat burners, and male performance enhancement.

20. Around 2011, Plaintiff began developing a new product in the muscle-gainer sub-market of the nutritional supplement world.

21. After devoting its resources for over a year on product development and testing, Plaintiff introduced “Mass FX Black” in April 2013.

22. In addition to “Mass FX Black,” Plaintiff has introduced numerous natural nutritional supplements that directly compete with Defendant’s “Research Peptides,” including but not limited to, “Advanced PCT,” “Ultra Reps,” “Stacked BCAA,” “SuperSize,” “Gym Juice,” and “German Creatine.”

Defendant King Peptides And Its Purported “Research Peptides”

23. Defendant King Peptides is a competing supplement company in Florida.

24. King Peptides is engaged in false and misleading advertising with respect to its various purported “Research Peptides,” including but not limited to, Growth Hormone Releasing Hormone (“CJC-1295”), Growth Hormone Releasing Peptide-2 (“GHRP-2”), Growth Hormone Releasing Peptide-6 (“GHRP-6”), Mechano Growth Factor (“MGF”), and Melanotan II. As evidenced by King Peptides’ representations on its website, these

1 “Research Peptides” are unlawfully marketed and misbranded as “not for human
2 consumption” and “intended for laboratory research purposes only.” Contrary to these
3 “disclaimers,” King Peptides’ advertisements claim that its “Research Peptides” will
4 provide numerous purported benefits to consumers seeking to enhance their physiques,
5 including but not limited to, increasing the production of human growth hormone,
6 promoting muscle gain and strength, weight loss, anti-aging properties, increasing lean
7 body mass, and reducing body fat.

8 25. King Peptides is not shielded from liability merely by labeling its products
9 as “research peptides,” which are purportedly “not for human consumption” and
10 “intended for laboratory research purposes only.” To the contrary, King Peptides clearly
11 markets and advertises its “Research Peptides” to consumers seeking to alter the structure
12 and function of their bodies, including bodybuilders and other competitive athletes.

13 26. King Peptides makes the following representations on its website, which
14 demonstrate that the intended use of its “Research Peptides” are in fact intended for
15 human use:

16 a. “GHRP-2 substantially stimulates the pituitary gland’s increased
17 natural production of the body’s own endogenous human growth
18 hormone. GHRP2 has shown on its own to robustly increase IGF-1
19 levels, and even greater results occurred when used with Growth
20 Hormone Releasing Hormone to which also stimulates the pituitary
21 gland to produce increased natural secretion of human growth
22 hormone. This also boosts the hypothalamus function as well.”

23 27. “The major side effect accompanied by the use of GHRP-6 or other GH
24 secretagogues is a significant increase in appetite because secretagogues mimic the action
25 of Ghrelin, a peptide which is released naturally in the lining of the stomach and
26 increases hunger and gastric emptying. GHRP-6, other secretagogues and ghrelin
27 stimulate the anterior pituitary gland causing an increase in GH release.” Thus, King
28 Peptides’ “Research Peptides” are plainly not “for laboratory use only.” Rather, the

language asserting that King Peptides products are “not for human consumption” are a dog whistle to bodybuilders who purchase hardcore drugs without being informed of the risks.

4 28. Indeed, many of the products sold by king peptides are either
5 pharmaceuticals or otherwise harmful to humans. Defendants fail to disclose the
6 negative effects of their products.

CLAIMS FOR RELIEF
FIRST CLAIM FOR RELIEF

(False Advertising in Violation of Section 43(a)(1)(B) of the Lanham Act)

11 29. Plaintiff incorporates the allegations contained in the foregoing paragraphs
12 as though fully set forth herein in their entirety.

13 30. King Peptides has purposely made false and misleading descriptions of fact
14 concerning the nature, characteristics and qualities of the products it promotes and sells
15 on its website, including its various purported “Research Peptides.” As evidenced by
16 King Peptides’ representations on its website, these “Research Peptides” are unlawfully
17 marketed and misbranded as “not for human consumption” and “intended for laboratory
18 research purposes only.” Contrary to these “disclaimers,” King Peptides’ advertisements
19 claim that its “Research Peptides” will provide numerous purported benefits to
20 consumers seeking to enhance their physiques, including but not limited to, increasing
21 the production of human growth hormone, promoting muscle gain and strength, weight
22 loss, anti-aging properties, increasing lean body mass, and reducing body fat.

23 31. Defendant's false and misleading advertising has the tendency to deceive a
24 substantial segment of the public into believing that they are purchasing a product with
25 different characteristics. Defendants fail to disclose the harmful side effects of their
26 products, including severe liver damage.

27 32. The deception is material because it is likely to influence a consumer's
28 purchasing decision, especially if the consumer is unaware of the serious risks of using

1 these purported “Research Peptides.” By falsely advertising their product as “NOT FOR
2 HUMAN CONSUMPTION” Defendants attempt to get an end-around proper disclosures
3 of the negative side-effects of its products, such as severe liver damage which their
4 customers are not informed of.

5 33. King Peptide’s “Research Products” directly compete with Plaintiff’s
6 products, including but not limited to, its bodybuilding supplement “Mass FX,” as well as
7 its various other natural nutritional supplements, “Advanced PCT,” “Ultra Reps,”
8 “Stacked BCAA,” “SuperSize,” “Gym Juice,” and “German Creatine.”

9 34. Defendant has introduced false statements into interstate commerce via
10 marketing and advertising on various websites and shipment of their products into
11 interstate commerce containing false advertising.

12 35. Plaintiff has suffered both an ascertainable economic loss of money and
13 reputational injury by the diversion of business from Plaintiff to King Peptides and the
14 loss of goodwill in Plaintiff's natural nutritional products. Indeed, Defendant's conduct
15 is a black eye on the industry as a whole, and has the tendency to disparage Plaintiff's
16 products and goodwill. Defendants have created an illegitimate marketplace for
17 bodybuilding supplements that directly compete with Plaintiff's products. Bodybuilders
18 are drawn to Defendants "hard-core" products to the detriment of Plaintiff and the
19 marketplace as a whole.

36. King Peptide's actions, as described above, constitute false and misleading descriptions and misrepresentations of fact in commerce that, in commercial advertising and promotion, misrepresent the nature, characteristics, and qualities of their products in violation of Section 43(a)(1)(B) of the Lanham Act.

SECOND CLAIM FOR RELIEF

(Violation of RICO)

(against all Defendants)

27 37. Plaintiff incorporates the allegations contained in the foregoing paragraphs
28 as though fully set forth herein in their entirety.

1 38. Under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301(g)(1) the
2 term “drug” includes (1) any articles intended for use in the diagnosis, cure, mitigation,
3 treatment, or prevention of disease in man or other animals, and (2) articles (other than
4 food) intended to affect the structure or any function of the body of man or other animals.

5 39. The introduction or delivery for introduction into interstate commerce of any
6 misbranded drug is prohibited 21 U.S.C. § 331(a). Misbranding encompasses dispensing
7 without a prescription a drug intended for use by which, “because of its toxicity or other
8 potentiality for harmful effect, or the method of its use, or the collateral measures
9 necessary to its use, is not safe for use except under the supervision of a practitioner
10 licensed by law to administer such drug.” 21 U.S.C. § 353(b)(1). A drug is also
11 misbranded where its labeling was false or misleading in any particular (§ 352(a)), where
12 its labeling does not bear adequate directions for use (§ 352(f)(1)), or where the drug was
13 manufactured, prepared, propagated, compounded or processed in an establishment not
14 registered with the Secretary of Health and Human Services (§ 352(o)). The introduction
15 or delivery for introduction into interstate commerce of a misbranded drug is a felony. (§
16 333(a)(2)).

17 40. “Peptides” are chemical compounds containing 2 or more amino acids
18 linked by the carboxyl group of 1 amino acid and the amino group of another. Due to
19 their toxicity or potential for harmful effect, peptides cannot be dispensed for human use
20 without a prescription from a licensed medical practitioner.

21 41. There is an illegitimate market for peptides among body builders and others
22 who engage in weight training, since it is believed that the use of these substances
23 enhance muscle development.

24 42. Defendants Singerman and Braun formed King Peptides in 2014 to
25 capitalize on the market for these illegal goods. Kingpeptides.com (the “Site”) is
26 engaged in a comprehensive scheme to obtain money and property by means of false and
27 fraudulent pretenses, representations and promises, including the illicit sale of peptides
28 and other pharmaceuticals labeled as “research chemicals.” In 2015, ownership of the

¹ Site changes hands and it is now run by Unlimited Products and Solutions, LLC, listing
² “Ian Rich” as its only member.

3 43. On the Site, several misbranded drugs are listed under tabs “peptides”
4 “research liquids” and “research chemicals.” Additionally, there are disclaimers on the
5 Site that are part of a scheme designed to deceive regulators and internet service
6 providers, but have no basis in reality.

7 44. The drugs sold on the site are bodybuilding drugs, including the following:
8 Anastrozole, used treat breast cancer (body builders use it to downcycle from steroid
9 use); Clenbuterol, a sympathomimetic amine used by sufferers of breathing disorders as a
10 decongestant (bodybuilders use it to burn fat); Sildenafil (Viagra), used for erectile
11 dysfunction and popular in the body building community to counteract the side effects of
12 other drugs. Additionally, the Site sells peptides like Melanotan II, GHRP-6 and PT-141.

13 45. Illegal distribution of peptides, research liquids, and research chemicals is
14 facilitated by use of the Internet, through which substances could be sold without a
15 prescription by sources in other countries, including the People's Republic of China. The
16 Conspiracy Defendants have knowingly sold the above drugs and peptides to be
17 delivered by commercial interstate carrier.

18 46. The Conspiracy Defendants have violated the substantive RICO statute, 18
19 U.S.C.A. § 1962 as detailed above by receiving income from a pattern of racketeering
20 activity engaging in interstate commerce. Defendants have conspired among themselves
21 to engage in the above activity.

22 47. Plaintiff has been injured in his business or property by reason of the
23 Conspiracy Defendants violation of section 1962 by, *inter alia*, the diversion of sales to
24 the Site, which sells products directly in competition with Plaintiff's products.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

PRAAYER

Wherefore, Plaintiff Nutrition Distribution LLC prays for judgment against Defendants as follows:

1. For preliminary and permanent injunctive relief enjoining Defendant from producing, licensing, marketing, and selling any purported “Research Peptides,” including but not limited to, Growth Hormone Releasing Hormone (“CJC-1295”), Growth Hormone Releasing Peptide-2 (“GHRP-2”), Growth Hormone Releasing Peptide-6 (“GHRP-6”), Mechano Growth Factor (“MGF”), and Melanotan II;
 2. For an award of compensatory damages to be proven at trial;
 3. For an award of any and all of Defendant’s profits arising from the foregoing acts in accordance with 15 U.S.C. § 1117 and other applicable laws;
 4. For restitution of Defendant’s ill-gotten gains;
 5. For treble damages;
 6. For punitive damages;
 7. For costs and attorneys’ fees; and
 8. Any other relief the Court may deem appropriate.

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